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June 2, 2009

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto ON M4P 1E4

Attention: Ms Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: Enbridge Gas Distribution Inc. – Phase 2
Shell Energy North America (Canada) Inc. (“Shell Energy”)
Submissions
Board File No. EB-2008-0219

Please find attached the Submissions of Shell Energy in the above noted proceeding.

Yours very truly,

McCarthy Tétrault LLP

Signed in the original

Per: George Vegh
c: Paul Kerr, Shell Energy
Enbridge Gas Distribution Inc. (via email only)
Norm Ryckman (EGD)
Fred Cass (Aird & Berlis)
Intervenors (via email only)

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, C. 15 (Schedule B) (the “**OEB Act**”);

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2009;

**SUBMISSIONS OF
SHELL ENERGY NORTH AMERICA (CANADA) INC.**

Introduction and Summary

1. When the Board established the rules for direct purchase, it determined that direct purchase customers will have firm delivery obligations along with penalties and other serious consequences for non-delivery. Since that policy was established, direct purchase customers have used a portfolio of transportation arrangements to meet their delivery obligations to EGD’s franchise. This portfolio includes Long Term Firm transportation, Short Term Firm transportation, Interruptible transportation and Diversions. Direct purchase customers have successfully met their firm delivery obligations and EGD has always been able to keep its system in balance. The current system works.
2. EGD is proposing that the Board reverse its policy. EGD’s original application requested the Board to require all direct purchase customers to contract for only Long Term Firm services, such that other services may not be utilized to meet direct purchase delivery obligations. In its supplemental evidence EGD amended its original application, and proposed that this requirement should only be imposed on small customers who are

served by marketers/agents.¹ EGD is proposing this new policy on the grounds that this is necessary to ensure distribution system reliability.

3. These proposals should not be lightly made. In asking the Board to reverse its policy, and in raising allegations of system reliability, EGD should be expected to have made a serious effort to substantiate its claims. Unfortunately, EGD's proposal is perhaps unprecedented by the lack of credible evidence proffered in its support; it lacks substance, analysis and coherence. In short, EGD has failed to demonstrate that reliance on services other than Long Term Firm results in a material risk to system reliability, it has failed to provide any meaningful evidence on:
 - The contribution of these other services to meeting peak requirements;
 - The extent to which reliance on these services creates a material risk to system reliability;
 - The cost to Ontario gas consumers of imposing a requirement to purchase Long Term Firm services; or
 - Evaluating alternatives to Long Term Firm services.
4. The legal burden on EGD in this case is to demonstrate that its proposal is "just and reasonable";² it has the onus of meeting that test. The Board's determination of whether a proposal is just and reasonable involves a balancing of its statutory objectives relating to natural gas.³ EGD's actions suggest that all of these objectives are trumped if an allegation of system reliability is raised – whether substantiated or not.

¹ The precise demarcation of which customers are captured by this policy remains unclear. This issue is addressed in Part III - Remedy Requested, of these submissions.

² OEB Act, s. 36.

³ These are set out in s. 2 of the OEB Act as:

- (1) To facilitate competition in the sale of gas to users;
- (2) To protect the interests of consumers with respect to prices and the reliability and quality of gas service;
- (3) To facilitate rational expansion of transmission and distribution systems;
- (4) To facilitate rational development and safe operation of gas storage;
- (5) To promote energy conservation and energy efficiency in a manner consistent with the policies of the Government of Ontario;
- (5.1) To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas;

5. These submissions are organized as follows:
- Part I addresses the evidentiary burden on the applicant in light of (i) the nature of the allegations being made about system reliability; and (ii) the request for the Board to reverse its current policy.
 - Part II addresses EGD's proposal and the evidence filed in support of the proposal. This Part outlines the contribution of different transportation services to the EGD franchise with special emphasis on how EGD's evidence on these services contains inaccuracies and irrelevant assumptions.
 - Part III addresses the remedies requested.

Part I – The Evidentiary Burden

(a) Allegations of Threats to System Reliability

6. EGD's basic proposition is that reliance on gas transportation services other than Long Term Firm poses a reliability risk to the system. EGD has not attempted to quantify that risk, other than to say that it "is not zero".⁴ In argument, for the first time, EGD claims that it is TCPL, and not EGD, that should be relied upon to quantify that risk. It then points to TCPL's statement that, "on a given peak day, there are no guarantees."⁵ According to EGD, the Board can rely on TCPL's statement that there is not 100% certainty as sufficient to make a finding that there is a material risk to system reliability. There are several problems with this proposition.
7. First, EGD is the applicant. It has the burden of proving its case. However, it made no effort to perform an analysis of the risk that these other transportation services will not be available – as will be addressed in greater detail below, it did not even ask relevant questions on the contribution of these services.

(6) To promote communication within the gas industry and the education of consumers.

⁴ Ex. I-11-12.

⁵ EGD Argument in Chief, para. 18 (citing Transcripts of Day 3 of the Oral Hearing, May 14, 2009 ("Day 3 TR"), p. 175).

8. It is worth noting here that there are industry standards for determining whether pipeline capacity is constrained. As Direct Energy's witnesses noted, pipeline capacity constraints would be reflected in a basis differential between two delivery points.⁶ This methodology is well known to EGD. In fact, in the NGEIR proceeding, where gas LDCs, including EGD benefitted from a finding of an absence of pipeline constraints, they presented expert evidence to demonstrate a "price correlation analysis"⁷ among delivery points. EGD could have prepared evidence to try and substantiate its current allegations, as it has done in the past, but it did not. Instead, it inappropriately attempts to shift that responsibility to TCPL to make its case.
9. Second, EGD's submission that its burden is met by showing that the risk is greater than zero suggests a standard that is not practical. No regulator in Canada has approved this as a standard. This Board, in the Hydro One Niagara Reinforcement case, refused to grant Hydro One Leave to Construct a transmission facility because, although Hydro One claimed that there were system reliability benefits from the project (just as EGD is claiming that there are reliability benefits from its proposal), "Hydro One did not include any evaluation of such benefits in its evidence, and, therefore, the reliability benefits have not been adequately demonstrated."⁸
10. Similarly, the National Energy Board (NEB) has expressly rejected the standard proposed by EGD. In approving TCPL's application to remove facilities from service (the "Keystone Application"), the NEB noted that its "decision does not come without certain risks."⁹

"However, in exercising its mandate it is the duty of the Board to consider all factors and to ensure that the potential risks are carefully measured in order to satisfy itself that the outcome of assuming such risks is superior to the alternative."

⁶ Day 3TR, p. 20.

⁷ Ontario Energy Board, EB-2005-0551, Natural Gas Electricity Interface Review, Decision with Reasons (Nov. 7, 2006), p. 37.

⁸ EB-2004-0476, Interim Decision, p. 17.

⁹ National Energy Board, MH-1-2006, TransCanada Keystone Pipeline GP Ltd (the "Keystone Application"), Reasons for Decision (February 2007), at pp. 58-59 (emphasis in the original).

...[P]assing the no harm test is not the same as the Application passing a no **risk** of harm test as Ontario suggested, which would be impossible and could result in no regulatory approvals ever being granted. Approving this Application, as with any application is not risk free.”

11. The expectation of regulators is for applicants to substantiate – not just assert – allegations of system reliability concerns. Again, the approach of the NEB in the Keystone Application is informative. In that case, the NEB noted that TCPL “submitted the Base Case to address the forecast and prepared probability distributions from alternative forecasts”. The NEB stated that it found “the concepts of a statistical analysis with associated probabilities to be a helpful tool in assessing the likelihood of various scenarios.”¹⁰ In this case, EGD provided no modeling at all, performed no analysis, and apparently is of the opinion that it has no onus to do so.
12. Third, in relying on TCPL’s evidence, EGD is apparently trying to put words in TCPL’s mouth. EGD is claiming that TCPL has determined that anything less than 100% certainty is a risk that should not be taken. TCPL has never taken this position. To the contrary, in its submissions in the Keystone Application referred to above, TCPL emphasized the need to quantify system reliability risks to support its own positions. In arguing against a coalition of shippers (“BCDENS”), TCPL made the following submissions to the NEB:

“BCDENS has not made any efforts to attach any probability to such a set of circumstances, but would apparently have the Board make a decision on the basis of unquantified possibilities. The BCDENS approach appears to ask the Board to conclude that if there is any conceivable negative impact to gas shippers, that's where the inquiry must stop.

...

With respect, if that's what BCDENS is suggesting, then it's not much of a decision-making model. If personal decisions were made on that

¹⁰ *Ibid.*, pp. 37-38.

basis, nobody in this room would have gotten out of bed this morning....

Risk must be assessed based on probabilities, not possibilities. That is how rational, objective and balanced decisions get made.”

13. There is no suggestion that TCPL has departed from that standard (or is urging the Board to depart from that standard) in this case.
14. Further, as is addressed in greater detail immediately below, EGD is proposing that, in reviewing transportation arrangements, the OEB should reverse its current policy of relying on firm delivery obligations accompanied by serious contractual remedies for failure to deliver. This raises EGD’s burden even higher. It should have to make a compelling case for the Board to change its policy and practice– especially one that is as foundational and that has proven to be as effective as the one at issue here.

(b) Current OEB Policy and Practice

15. The current structure of direct purchase in Ontario was established to implement the October 31, 1985 federal-provincial Agreement on Natural Gas Markets and Prices (the “Halloween Agreement”). The Halloween Agreement was implemented through regulatory decisions, the foundational one being the Ontario Energy Board’s Decision setting rates for “Contract Carriage Arrangements”.¹¹ One of the key issues in that decision was whether the OEB should allow distributors “to be entitled to verify T-customers’ arrangements, including their suppliers’ gas reserves, and the adequacy of T-customers arrangements with TCPL”.¹² The OEB decided that it would not allow this request.¹³
16. The direct purchase system has developed within that framework. It currently consists of an obligation of direct purchase customers to make firm delivery obligations on a mean

¹¹ Ex. HD1.2, p. 9, (EBRO 410, 411 and 412, April 4, 1986).

¹² *Ibid.*, p. 26 (emphasis added).

¹³ *Ibid.*, p. 30.

daily volume basis. A customer's failure to deliver is secured through serious penalties for failure to deliver.¹⁴

17. The penalties for failure to deliver include a per unit penalty of 150% of the cost of undelivered commodity¹⁵ and EGD's ability to suspend services.¹⁶ The consequences of suspending service for an end user is that it will not receive gas; the consequence of suspending service for a marketer is that its customer will be moved to system gas – which effectively means that the marketer can be put out of business.¹⁷
18. Under both scenarios, EGD could pursue its contractual remedies against specific customers who fail to deliver. It is important to point out that these contractual remedies for failure to deliver are separate and apart from EGD's protocols for curtailing customers. This is an important point because EGD is, in argument and through its expert witness, trying to now assert that although its curtailment protocol *is* an effective discipline for large volume customers, it *is not* an effective discipline for customers served by marketers. However, the evidence is that EGD has always relied exclusively on contractual remedies to enforce delivery obligations with no serious reliability issues. Issues respecting curtailment of customers as a way to enforce delivery obligations are irrelevant.
19. EGD's witnesses' evidence on this is as follows:¹⁸

“MR. VEGH: So, first, you could curtail interruptible customers?”

MS. GIRIDHAR: Yes.

MR. VEGH: And then large-volume firm customers, and go down the list. These curtailment protocols that you present here, these aren't remedies for failure to

¹⁴ EGD's evidence was confused as to what constitutes a failure to deliver. Although its witness suggested in oral evidence that failure to nominate within the “timely” window constituted a failure to deliver, it eventually produced its Gas Delivery Agreement, which demonstrated that nominations do not have to be within the “timely” window to meet contractual obligations. See EGD's discussion of timely nomination window at Day 1 TR, pp. 54-56 and Ex. HDU 1.1.

¹⁵ Ex. HD1.2, p.3 (Ex. I-9-4).

¹⁶ *Ibid.*

¹⁷ Transcript of Day 1 of the Oral Hearing, May 7, 2009 (“Day 1 TR”), pp. 67-68.

¹⁸ *Ibid.*, pp. 74-75.

deliver, right? These are used to address system limitations regardless of the reason why the system would be constrained?

MS. GIRIDHAR: That is correct. Failure to deliver would be a subset of all the reasons why we could have a system problem.

MR. VEGH: Right, but your protocols are not now set up to cut off customers for failure to deliver, so much as they are to just follow this protocol?

MS. GIRIDHAR: That is correct.

MR. VEGH: And, in fact, these protocols have no -- bear no relation to failure to deliver, right, because there are customers who could be curtailed here who have delivered their gas?

MS. GIRIDHAR: That is correct. These protocols have been in place for decades, I would say, if not -- well --

MR. MacPHERSON: Longstanding.

MS. GIRIDHAR: They're longstanding protocols, long before the advent of direct purchase."

Further:¹⁹

"MR. VEGH: Sorry for interrupting. So I'm just saying that the curtailment protocol you have here deals with a different issue than the failure to deliver issue?

MS. GIRIDHAR: That's right. It's a more expansive set of circumstances than --

MR. VEGH: That's right. So when we look at what's backing up firm delivery obligations, we should actually look at the contractual entitlements, not the curtailment protocols?

MS. GIRIDHAR: I would agree with that.

MR. VEGH: You would agree with that?

MS. GIRIDHAR: Yeah."

20. As a result, the current system imposes firm delivery obligations backed up by serious contractual consequences for failure to meet these obligations. This system has been in

¹⁹ *Ibid.*, p. 76.

place since the advent of direct purchase. The system has worked - EGD has always been able to balance the system on a daily basis.²⁰

Part II - EGD's Proposal

21. EGD proposes a change to this system because direct purchase customers are relying less on Long Term Firm transportation services to meet their delivery obligations. According to EGD's pre-filed evidence (dated September 26, 2008),

“[TCPL's] Index of Customers, effective November 1, 2007 shows that contracts to EGD franchise, net of the Company's contracts, are approximately 64,000 GJ/d. As of November 1, 2007, daily deliveries from direct purchase shippers equaled 520,937 GJ/d. It therefore appears that approximately 457,000 GJ/d are delivered either through Interruptible Transport (“IT”) arrangements or through diversions of gas on firms contracts to other delivery areas, presumably because such arrangements deliver cost savings to shippers over contracting firm to the delivery area.”

22. This statement, which is the only real substantive evidence in support of EGD's application, is both incorrect and irrelevant.
23. It is incorrect because it states that gas that is not delivered under Long Term Firm contracts are delivered through IT or diversions. It completely leaves out gas delivered under Short Term Firm service. As will be discussed in greater detail below, Short Term Firm transportation has been used to support firm delivery obligations for several years now.
24. It is irrelevant because measuring the contribution of gas delivered by alternatives to Long Term Firm as of November 1 in any given year does not provide any meaningful insight into the contribution of these services to meeting peak demand.
25. The evidence on both of these points will be addressed in turn.

a) EGD's Incorrect Assertion that Services other than Long Term Firm are Interruptible

²⁰ Ex. I-9-3.

26. TCPL provides a number of firm and discretionary services. Long Term Firm services include Long Term Firm Mainline and other services; discretionary services include Short Term Firm, Interruptible Transportation and Diversions (though, technically speaking, Diversions are a feature of firm services, as opposed to a discreet service).²¹
27. The way in which all of these services have contributed to meeting EGD's gas supply needs has changed over the years. Most relevant for this case, there is much less reliance on Long Term Firm services that make use of the TCPL Mainline ("Long Haul"). Firm Long Term contracting on the TCPL Mainline has declined from approximately one million GJ/day in 1990 to approximately 225,000 GJ/day in 2009. This is illustrated in the following table:²²

Contract Demand to Enbridge CDA, Enbridge EDA, Victoria Square #2 CDA and Goreway CDA										
	1990-11-01		1995-11-01		2000-11-01		2005-11-01		2009-04-01	
	GJ/day	% of Total	GJ/day	% of Total	GJ/day	% of Total	GJ/day	% of Total	GJ/day	% of Total
Long-Haul	1,001,020	93%	1,069,762	90%	932,384	80.1%	741,260	50.4%	223,745	18.3%
Short-Haul	74,626	7%	123,208	10%	231,967	19.9%	729,951	49.6%	996,141	81.7%
Total	1,075,646	100%	1,192,970	100%	1,164,351	100%	1,471,211	100%	1,219,886	100%

28. This decreased use of Long Term Contracts on Long Haul transportation is primarily driven by increased transportation routes constructed to serve Ontario over this period.²³
- As the NEB has noted,

"In the 1990s, the regulatory environment encouraged competition and market based solutions. The commencement of service in 2000 on the Alliance and Vector pipelines created a new and competitive path to take significant WCSB gas to markets that had traditionally been served by the Mainline....During this proceeding the Applicants [TCPL] stated that the Mainline had, in fact, lost about 42. million m³/d (1.5 Bcf/d) of contracted volumes, which have not come back."²⁴

²¹ Ex. L-21, at p. 7.

²² Ex. L-15-1.

²³ Day 3 TR, p. 123, Line 13-27.

²⁴ **Keystone Application**, pp. 56-57.

29. In Ontario, the growth of Dawn as an attractive hub has led to a market preference for Dawn deliveries. As a consequence, gas delivered from Dawn to EGD's franchise (represented as "Short Haul" capacity in the above Table) has increased dramatically from the period 1990 to 2009. As Dawn deliveries and Short Haul deliveries increase, unutilized Long Haul capacity increases. This has reached the point that, today, there is virtually no Short Haul capacity available to the EGD franchise, and approximately 1.9 million GJ/Day of Long Haul capacity. This is illustrated in the table below²⁵:

Table 4: Current Uncontracted Long-term Firm Capacity to the Enbridge CDA and EDA

Transportation & Receipt Location(s)	Capacity to the Enbridge CDA	Capacity to the Enbridge EDA
<u>Long-Haul:</u> Empress or Points in Saskatchewan	1,550,000 GJ/day	386,000 GJ/day
<u>Short-Haul:</u> Union Dawn or Union Parkway	0 GJ/day	0 GJ/day

30. The reality of excess capacity on the TCPL Mainline is expected to continue. According to TCPL's evidence before the NEB in the Keystone Application referred to above, "Despite this strong demand growth, the Central Canadian market is expected to enjoy a strong surplus of available pipeline capacity for the foreseeable future."²⁶ In reviewing TCPL's evidence in that application, the NEB concluded that "there will be sufficient capacity for current and projected firm and interruptible gas service requirements."²⁷ The NEB specifically held that "there will likely be a similar amount of spare capacity on the Mainline in 2015 as there is in 2006."²⁸ TCPL's evidence in this application is that this state of excess capacity has not fundamentally changed since the time of the Keystone Application.²⁹

²⁵ Ex. L-21, at p. 13.

²⁶ Ex HD1.2, p. 70 (TransCanada and Keystone Transfer Application, Appendix G, p. 20).

²⁷ Keystone Application, p. 56.

²⁸ Keystone Application, p. 50.

²⁹ Day 3 TR, p. 172

31. Despite the reality of excess capacity, EGD states in its argument in chief that it is “pipeline constrained”.³⁰ This statement informs EGD’s proposal in this case. It is therefore worth exploring.
32. The evidence cited by EGD in support of its statement of “pipeline constraint” is an interrogatory response that makes the following statement:³¹
- “EGD is pipeline constrained because its distribution system physically requires a certain quantity of gas to flow through Enbridge’s CDA and EDA delivery areas on the TCPL system. In the event that non-firm deliveries are restricted on the TCPL system, Enbridge has only the limited ability to flow additional volumes of gas into its distribution system via the Union Parkway Interconnect.”
33. This statement is revealing for two reasons. First, it does not support the proposition that pipeline capacity serving EGD’s franchise is *constrained*; at most, it indicates that this capacity is *finite*. Again, EGD has provided no evidence to measure whether the pipeline is constrained. The information of the pipeline owner (TCPL) and the pipeline regulator (NEB) is that there is excess capacity.
34. The second reason why EGD’s statement is revealing is because it sheds light on EGD’s apparent lack of appreciation for the reality of changing transportation market conditions, yet this does not seem to have always been the case. EGD last brought its Gas Supply Plan to the Board in 1995. As appears from the table reproduced³² at paragraph 27 above, at that time, the TCPL Mainline was delivering over one million GJ/d of gas to the EGD franchise area. EGD’s evidence in that case was that “as upstream pipelines operate at higher load factors and try to maximize throughput they may not be able to offer the same flexibility as they did in the past”.³³ The Board approved EGD’s proposal

³⁰ EGD Argument in Chief, para. 36.

³¹ Ex. I-11-17.

³² Ex. L-15-1.

³³ Ex. HD1.2, p. 163, (Evidence filed by EGD in EBRO 490 (1995), Ex. D1-2-4, p. 8)

as “a reasonable attempt to recognize the changing environment and diminishing flexibility.”³⁴

35. By contrast, the current application is devoid of any consideration of how *increased* pipeline flexibility has an impact on gas deliveries. As the NEB has noted, the consequences of increased capacity on the TCPL Mainline is that TCPL has made efforts to make that capacity more commercially attractive: “The Board recognizes that TransCanada’s efforts were driven by the new competitive environment. They were attempts to make the Mainline more competitive and to maximize utilization of facilities.”³⁵ Ontario consumers have benefitted from this flexibility. However, rather than allowing the province to capture the benefits of excess transportation capacity to Ontario, EGD’s proposal would try to wind the clock back to 1995, forfeit that benefit, and have shippers contract as if there were a transportation shortage.
36. The way in which the market responded to the reality of excess capacity was to take advantage of alternatives to Long Term Firm services.
37. The availability of these alternative services is proportional to Long Term Firm services because these other services use the capacity remaining after Long Term Firm services are contracted for: the less capacity is committed to Long Term Firm services, the greater the capacity is available for other services.³⁶ One service that deserves a detailed discussion is Short Term Firm.

³⁴ EBRO 490, Reasons for Decision (August 29, 1995), p. 174.

³⁵ Keystone Application, p. 56.

³⁶ Day 3 TR, at pp. 126-127. Mr. Stringer described the relationship between Short Term Firm services (“STFT”) and Long Term Firm services (“LTFT”) as follows:

MR. STRINGER: So maybe I can talk to the STFT question first. So, ultimately, any available firm capacity in our system is a function of, obviously, pipeline capacity, but the contracts that are in place, and then any excess capacity resulting from contracts that have been turned back or not renewed over time. So we are routinely assessing our capacity.

In terms of short-term firm, say, for the winter period that we've been talking about here, once we've assessed our available system capacity, we would post that capacity, as per our tariff, in the month of July. So in the period of July 1st to 15th, we would post the winter block of capacity for short-term firm, and that information is publicly available on our website.

38. Although Short Term Firm services are as firm in their service priority as Long Term Firm, EGD's evidence, inexplicably, (and incorrectly) refers to all alternatives other than Long Term Firm services as interruptible.³⁷
39. Short Term Firm services have made a considerable contribution to supporting delivery obligations for several years. Tables 5 and 6 from TCPL's pre-filed evidence (reprinted below)³⁸ illustrate the relative contribution of different services to the EGD franchise in 2008-2009:

And then in the latter half of July, the 16th to the 31st, we would post individual monthly blocks for the short-term firm capacity. And, obviously, concurrent with that, we also have our firm capacity available. Again, that available capacity is public on our website. So it's posted for everyone to see. And, again, it's routinely updated to reflect any contracts that have been sold.

FT -- if we sell an FT contract, that capacity is updated. Likewise, if we sell an STFT contract, that posting is updated. So as we get notice of renewal or we sign new contracts, we are continually reassessing our available capacity and updating our posting on capacities.

³⁷ In addition to its original pre-filed evidence discussed above, EGD has referred to Short Term Firm as an interruptible service in the following contexts:

- Its supplemental evidence refers to a reduction of Long Term Firm as a **"reduction of firm deliveries by direct shippers"** from November, 2007 to November, 2008 (Ex. C-1-10, p.3)
- Its response to Board Staff's sole interrogatory on this issue said that security of supply concerns arise **"To the extent that virtually all the direct purchase supplies are designated firm supply but not underpinned by firm transport on TransCanada"** (Ex I-1-16, p.2);
- Its response to a CCC Interrogatory stated that arrangements other than Long Term Firm **"consist predominantly of non firm transport as opposed to alternative firm transport (from other basins/market hubs)."** (Ex. I-8-15).
- Its oral evidence in Chief stated that all gas that is not contracted as Long Term Firm are not **"firm available supplies that are contracted for the franchise."** (Day 1 TR, p. 18)
- Even in its Argument in Chief, EGD states that its proposal would increase **"firm transportation to the franchise area by an estimated 200,000 GJ/day for the upcoming winter."** (EGD Argument in Chief, para. 11).

³⁸ Ex. L-21, pp. 20, 21.

Table 5: Winter 2008/09 Peak & Average Day Deliveries to the Enbridge CDA, Victoria Square #2 CDA and Goreway CDA

	Average Day		Peak Day	
	GJ	% of Total	GJ	% of Total
Long-Term Firm: FT, FT-SN, STS	477,388	53.9%	659,323	46.2%
Total Discretionary	408,805	46.1%	768,452	53.8%
• STFT	145,649	16.4%	564,782	39.6%
• Alternate Receipts/Diversion	178,269	20.1%	195,946	13.7%
• IT	84,887	9.6%	7,724	0.5%
Total	886,194	100.0%	1,427,775	100.0%

Table 6: Winter 2008/09 Peak & Average Day Deliveries to the Enbridge EDA

	Average Day		Peak Day	
	GJ	% of Total	GJ	% of Total
Long-Term Firm: FT, STS	221,104	71.0%	332,297	64.6%
Total Discretionary	90,424	29.0%	181,973	34.4%
• STFT	5,286	1.7%	12,038	2.3%
• Alternate Receipts/Diversion	81,219	26.1%	146,835	28.6%
• IT	3,919	1.3%	23,100	4.5%
Total	311,528	100.0%	514,270	100.0%

40. The increasing contribution of these services is understandable. Short Term Firm services, with a minimum one week term, are available for a shorter term than Long Term Firm services, with a one year minimum term.³⁹ If required, it is available on an as needed basis throughout the course of the year.
41. This is, in fact, how EGD has used the service to meet its gas supply needs. EGD explains its approach to meeting the 2009 peak requirements as follows:⁴⁰

“In preparation for meeting potential peak demand for the week of January 16th, EGD called for curtailment of all interruptible customers in the prior week, thus providing adequate notice to interruptible customers to arrange for excess supplies to the franchise in the form of Curtailment Delivered Supplies (“CDS”). At the same time EGD was concerned about its declining storage balances. Recognizing the need to acquire additional gas supplies EGD decided to purchase Empress supplies utilizing ST-FT transportation to the

³⁹ *Ibid.*, at p. 8.

⁴⁰ Undertaking HDU 1.3, at p. 1.

franchise area to the tune of 100,000 GJ/d for one week effective January 15, 2009. The ST-FT had the effect of increasing firm transport to the franchise for the week and providing for additional flexibility rather than purchasing gas at Dawn.”

42. EGD’s acquisition of Short Term Firm services as required to firm up deliveries is consistent with how other suppliers operate in Ontario. Thus, for example, in the 2008-2009 winter season, the following amounts (GJ/d) of Short Term Firm services were purchased on a monthly basis.⁴¹

November	December	January	February	March
3,361	191,846	860,601	158,942	169,741

43. It is clear from this table that the market for Short Term Firm services is flexible and dynamic. It is an economic use of the considerable excess capacity that is available on the Mainline. If EGD’s proposal is accepted, the opportunity to purchase Short Term Firm as and when required will be replaced with a mandatory order to purchase only Long Term Firm services with the same delivery entitlement every day: the value of excess Mainline capacity to Ontario will therefore have been forfeited.
44. Short Term Firm services have thus served the market well; in combination with Long Term Firm, Interruptible services and Diversions, the overall portfolio to Ontario has been reliable, economic and flexible. As a result of development of the Dawn Hub, there is excess capacity in the Mainline serving the province. This excess capacity is available to provide transportation services – both firm and interruptible, to the province. The services are purchased when they are required and shippers have met their delivery obligations. EGD has provided no estimate of the cost to the province of unwinding these other arrangements and, instead, requiring customers to purchase Long Term Firm.

⁴¹ These numbers were arrived at using Ex. HD3.8 (Contract Demand Energy Report Agreement Type STFT, Nov. ‘08-Mar. ‘09). The amount of contracted for STFT for the EGD CDA and EDA were added together for each month. Please see Day 3 TR, pp. 142-145 for TCPL’s confirmation that this process of evaluation is correct.

(b) EGD's Analysis Based on Firm Transportation Contracts as at November 1

45. All of the above information respecting the alternatives to Long Term Firm services and the availability of excess capacity was drawn out through interrogatories and cross-examination. EGD not only failed to address the contribution of these services in its pre-filed evidence in this case, but it also does not appear that EGD even made itself aware of these facts as it developed its proposal. There is considerable information available on TCPL's provision of Short Term Firm and other services, including:

- Contracted Demand Energy Report for STFT. This report shows the amount of STFT that is contracted for, as well as the contract term, the quantity per contract and the receipt point and delivery point. The report is prospective as well as historical. It is updated on a real-time basis. Shippers with a username and password can generate an updated report for any time period they choose.⁴²
- Contract Demand Energy Report for LTFT. This report shows the amount of LTFT that is contracted for (GJ/d), the contract term (one year or more) as well as receipt points and delivery points. The report is publicly available and only shows the LTFT contracts that are currently in service. Firm Transportation Storage Transportation Service and Firm Transportation Short Notice are included. Identity of the shipper is also disclosed.⁴³
- Future Contract Demand Energy Report. This report is publicly available and shows LTFT contracts with a future start date. The identity of that shipper is not revealed until the contracted for LTFT comes into service.⁴⁴
- LTFT Contract Renewal Reports. The bulk of LTFT contracts expire on either November 1st or April 1st. There is a requirement to renew LTFT contracts six months prior to the anniversary. Therefore, TCPL provides notice bulletins for LTFT contract renewal in May (six months prior to November) and again in November (six months prior to April). These bulletins show what LTFT is eligible for expiry, what has already been renewed and the LTFT contracts that were turned back.⁴⁵ TCPL then continues to update the available LTFT capacity for bid on a daily basis throughout the rest of the year.⁴⁶

⁴² Day 3 TR, pp. 140-146. See also Exhibit HD 3.8 for an example of a Contract Demand Energy Report for STFT.

⁴³ Day 3 TR, p. 146, Line 19.

⁴⁴ *Ibid.*, p. 146, Line 24.

⁴⁵ *Ibid.*, p. 147, Line 5.

⁴⁶ *Ibid.*, p. 139, Line 4.

- STFT Bulletins. This report shows the amount STFT capacity available for bid. TCPL holds an open season in July (for the winter peak) and again in January (for the summer peak) and then continues to update the available capacity for bid on a daily basis throughout the rest of the year.⁴⁷
 - Volume Planner Operations Report. Shows the daily available capacity status of the Mainline system.
 - Contract Expiry Report. This report shows the contract start and end date, type of service, primary receipt and delivery location, and contract demand (GJ/d). Updated regularly.⁴⁸
 - Gas Day Summary. Provides the receipt and delivery points of the gas (GJ) delivered on a daily basis.⁴⁹
 - Archived Information. TCPL also provides archived information for all Contract Demand Energy Reports and Mainline Firm Contract Renewals.⁵⁰
46. All of this information was available to EGD when it apparently considered whether or not there was a system reliability issue and, if so, how it should be addressed. However, EGD never sought this information.⁵¹ Instead, it asked TCPL how much firm transportation is contracted as at November 1 each year; November 1 is apparently an important date for EGD's internal planning metrics. However, as is set out in greater detail below, contracted capacity at that date does not provide meaningful information on the transportation that is used to serve the system. EGD therefore relied largely on irrelevant information in developing this proposal – this is a text book example of “Garbage in- Garbage out”, defined in Wikipedia as: “a phrase in the field of computer science or Information Communication technology. It is used primarily to call attention to the fact that computers will unquestioningly process the most nonsensical of input data and produce nonsensical output.”⁵²

⁴⁷ *Ibid.* p. 147, Line 19. See also TCU 2.10, attachments a) through j) for an example of these postings.

⁴⁸ http://www.transcanada.com/Mainline/info_postings/index_of_customers.html

⁴⁹ http://www.transcanada.com/Customer_Express/tools/gdsr_transcanada.htm

⁵⁰ *Ibid.*

⁵¹ Day 3 TR, pp. 148-149.

⁵² http://en.wikipedia.org/wiki/Garbage_in_garbage_out.

47. EGD's evidence is that, to develop its proposal, it contacted TCPL for information on the contribution of firm transportation contracts. EGD requested TCPL "to summarize for me the number of firm contracts to the CDA and the EDA (short haul and long haul) say at November 1 of each of the last five years."⁵³ TCPL responded to this request by attaching "Firm contracts to the CDA and EDA as of November 1 For each of the last five years. This includes both long-term firm (FT, STS) and short term (STS). Hope this is what you are looking for."⁵⁴ Thus, EGD requested, and TCPL provided, contracts entered into as at November 1 for the period 2003-2008. EGD continued to rely upon this November 1 date as the relevant date in all subsequent internal discussions and evidentiary statements on this issue. Apart from contacting TCPL, EGD did not consult with others. Specifically, although it had planned to consult with direct purchase customers prior to developing and filing its proposal, EGD ultimately did not do so. Its evidence is that, after "studying" the issue internally with TCPL intermittently for close to two years,⁵⁵ it ran out of time. As a result, EGD did not seek the insight or experience of direct purchase customers or shippers as to how transportation services were used to meet firm delivery obligations.
48. Thus, in presenting this proposal to the Enbridge Executive Management Team, EGD stated that a lack of firm contracts represented a "potential short fall" and "may trigger equivalent curtailment of firm customers to maintain system pressures."⁵⁶ The evidence of firm contracts was for November "as proxy for the whole year."⁵⁷
49. Similarly, in its pre-filed evidence (both original and supplemental), EGD refers to its concerns that too little gas is contracted under Long Term Firm according to TCPL's index of customers as of November 1 each year.⁵⁸

⁵³ Ex. I-12-5, Attachment 2, p.2.

⁵⁴ Ex. I-12-5 Attachment 2, p. 2.

⁵⁵ Technical Conference Day 2, April 22, 2009, p. 118, Line 10-22. See also Ex. I-12-5, Att. 2, in which EGD provides a record of communications that addressed the lack of FT contracts issue.

⁵⁶ Ex. I-12-5 Attachment 1, p. 3.

⁵⁷ *Ibid.*

⁵⁸ Ex. C-1-8, p. 3; and Ex. C-1-10, p. 3.

50. However, the quantity of firm transportation contracted for on November 1 of any given year bears no relation to the quantity of firm transportation contracts for a winter period. This is because, as indicated, Short Term Firm is not typically contracted for by November 1. It is contracted for closer to the time it is required. As a result, the amount of firm transportation contracted for on November 1 bears no relation to the amount of Short Term Firm supporting gas delivery in the Winter Season. This is illustrated in the following table⁵⁹:

**Short Term Firm Transportation (“STFT”) into the Enbridge CDA and EDA (collectively the
“EGD Franchise Area”)
November 1 vs. Actual Average Day and Actual Peak Day**

Year	Total contracted STFT into EGD Franchise Area as at Nov. 1 ⁶⁰ (GJ/d)	Actual Average STFT to EGD Franchise Area ⁶¹ (GJ/d)	Actual Peak Day STFT to Franchise Area ⁶² (GJ/d)	STFT contracted as at Nov. 1 vs. Actual Average Day STFT (%)	STFT contracted as at Nov. 1 vs. Actual Peak Day STFT (%)
2003/04	72,753	227,433	404,250	32.0	17.9
2004/05	29,482	26,662	24,679	-10.5	-19.5
2005/06	32,550	32,671	32,108	99.6	-1.4
2006/07	111,900	170,374	247,000	65.7	45.3
2007/08	12,151	55,176	100,747	22.0	12.1
2008/09	3,361*	150,935 ⁶³	576,820 ⁶⁴	.02	.0006

*(corrected at Day 3 TR, p. 145)

51. As a consequence, EGD’s continual reliance on November 1 as a relevant date to measure the contribution of firm contracts (like its characterization of Short Term Firm contracts as interruptible) demonstrates a fundamental misunderstanding of how

⁵⁹ Ex. HD1.2, p. 38.

⁶⁰ TCU-2.7, pp. 2-5.

⁶¹ Ex. L-18, pp. 1-7.

⁶² Ex. L-18, pp. 1-7.

⁶³ Ex. L-21, pp. 20-21.

⁶⁴ Ex. L-21, pp. 20-21.

transportation services are being used to serve the Ontario market. It is therefore not possible to draw any meaningful conclusions on how transportation arrangements may impact system reliability based on November 1 information – it completely misses the point.

(c) Conclusion on EGD's Evidence

52. Although EGD correctly notes that there is less reliance on Long Term Firm than there has been in the past, it has provided no analysis of whether that leads to any material risk that shippers will not meet their delivery obligations. To the contrary, the evidence that EGD has provided on alternatives to Long Term Firm is confused, and often incorrect. Specifically, EGD's evidence on alternatives to Long Term Firm is summarized in the following table:

EGD Allegation	Reality
Services other than Long Term Firm are Interruptible. ⁶⁵	Short Term Firm services (which contributed approximately 73% of non Long Term Firm services to the CDA in 2008-2009) are firm. ⁶⁶
TCPL does not maintain facilities for non Long Term services ⁶⁷	TransCanada's maintenance is not a function of FT contracting. ⁶⁸
Transportation contracts entered into as at November 1 are a suitable proxy for transportation services supporting delivery throughout the winter period (November – March). ⁶⁹	Transportation contracts entered into as at November 1 bear no relation to the contribution of transportation services throughout the winter period. ⁷⁰

53. Shell Energy takes very seriously the need to ensure that natural gas is supplied to the province in a reliable manner. However, two main conclusions can be drawn from

⁶⁵ See evidence cited at footnote 37.

⁶⁶ Ex. L-21, p. 20.

⁶⁷ Ex. C-1-8, p. 3

⁶⁸ Ex. L-15-4, p. 2.

⁶⁹ See discussion at par. 47, 48 of these submissions and accompanying footnotes.

⁷⁰ See discussion at par. 49-51 of these submissions and accompanying footnotes.

EGD's evidence on the contribution of services other than Long Term Firm to serve direct purchase customers.

54. First, EGD's evidence is speculative, inaccurate and irrelevant. It is not adequate to substantiate a Board determination that its current policy should be reversed.
55. Second, it conclusively demonstrates why the Board should not put utilities in charge of evaluating shippers' transportation contract portfolios. EGD's reliance on incorrect and irrelevant assumptions as the centre piece of its application is troubling. The point is not that EGD is trying to deliberately mislead the Board - it is not. The point is also not to gratuitously embarrass EGD for its remarkable ignorance of these facts. Rather, the point is that EGD is in a very poor position to evaluate the effectiveness of direct shippers' supply arrangements and it would be a mistake for the Board to put it in that position. In other words, under the current system, EGD does not know and does not have to know how direct shippers meet their obligations. This follows the Board's policy of not having utilities "verify T-customers' arrangements, including ...the adequacy of T-customers arrangements with TCPL" (to repeat the words of the Board in the EBRO 410, 411, 412 Decision). EGD's proposal in this case makes it clear that putting EGD in that role will cause more harm than good to the province.

PART III - Remedy Requested

56. The remedies requested in this case are unclear in two respects.
57. First, the revision to its Rate Handbook proposed at Ex. C-1-10 is different than the representations it has made in this proceeding in that the category of customers who are included in the Rate Handbook is broader than the category of customers EGD referred to in its evidence.
58. In cross-examination, EGD stated the following:⁷¹

⁷¹ Day 1 TR, p. 72

MR. VEGH: So -- but your current proposal in front of the Board is for the small-volume customers?

MS. GIRIDHAR: That's right.

MR. VEGH: It does not include large-volume customers who have their own ABC pool?

MS. GIRIDHAR: That is correct.

59. Shell Energy's submission is that, even if EGD's proposal is accepted by the Board, then the Board should clarify which customer classes are covered by the proposal. This class of customers should not include large volume customers who (or their buying group) have their own ABC pool.
60. The second area of uncertainty is with respect to EGD's request that it be entitled to recover in rates the cost of contracting for "additional firm transportation capacity for subsequent temporary assignment."⁷² In EGD's pre-filed evidence, it was suggested that EGD may make such purchases because not all pools renew on November 1, 2009.⁷³ It appears that EGD's proposal in its argument goes beyond the limited reason why it may seek to purchase additional firm capacity. To the extent it does go beyond those reasons, Shell Energy requests EGD to provide further particulars and reserves the right to respond to these particulars (and hereby requests the Board to authorize such a response).

Conclusion

61. It is respectfully submitted that EGD's proposal should be rejected because it has failed to demonstrate that reliance on services other than Long Term Firm results in a material risk to system reliability; it has failed to provide any meaningful evidence on:
- The contribution of these services to meeting actual peak requirements;
 - The extent to which reliance on these services creates a material risk to system reliability;

⁷² EGD Argument in Chief, para. 11.

⁷³ Ex. C-1-10, p. 10.

- The cost to Ontario gas consumers of imposing a requirement to purchase Long Term Firm services; or
 - Evaluating alternatives to Long Term Firm services.
62. As a consequence, it has not met its burden of demonstrating that its proposal is just and reasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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